No. 14-400

IN THE
Supreme Court of the United States

CHARLES E. HARRIS, III,
Petitioner,

v.

MARY K. VIEGELAHN, CHAPTER 13 TRUSTEE,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether, when a debtor in good faith converts a bankruptcy case to Chapter 7 after confirmation of a Chapter 13 plan, undistributed funds held by the former Chapter 13 trustee are refunded to the debtor or distributed to creditors.

TABLE OF CONTENTS

	Page
Interest of *Amicus Curiae*	1
Statement	2
I. Statutory Framework	2
A. Chapter 7	3
B. Chapter 13	3
C. Conversion from Chapter 13 to Chapter 7	5
II. Proceedings Below	7
Summary of Argument	9
Argument	12
I. The Bankruptcy Code Requires That Undistributed Post-Petition Funds in a Former Chapter 13 Estate Be Returned to the Debtor After Good-Faith Conversion to Chapter 7	12
A. The Statutory Text Requires the Former Chapter 13 Trustee To Return Undistributed Funds to the Debtor After Conversion, Not To Continue To Distribute Them to Creditors	12
1. Conversion "Terminates" the Chapter 13 Trustee's Authority To Distribute Funds to Creditors	12
2. Chapter 13 "Vests" Post-Petition Earnings in the Debtor, Not in Creditors	16

TABLE OF CONTENTS—Continued

Page

B. The Bankruptcy Code's Structure Confirms That Post-Petition Property Should Go to the Debtor, Not Creditors, After Good-Faith Conversion 18

1. Post-Petition Assets May Be Distributed to Creditors After Conversion Only Where the Debtor Converted in Bad Faith 18

2. Chapter 13 Is Designed To Be Completely Voluntary 19

3. A Chapter 13 Plan Cannot Be Applied After Conversion to Chapter 7 20

4. The Bankruptcy Code Contemplates That Chapter 13 Distributions Will End upon Conversion 21

C. The History of Section 348 Confirms That Congress Intended Undistributed Funds in a Chapter 13 Estate To Belong to the Debtor Following Conversion 22

II. The Equities and Public Policy Favor Returning Undistributed Chapter 13 Estate Funds to the Debtor After Conversion 25

A. Equitable Considerations Favor the Debtor Retaining Undistributed Chapter 13 Funds 25

TABLE OF CONTENTS—Continued

	Page
B. Proceeding Under Chapter 13 Offers Numerous Benefits to Debtors and Creditors Alike	27
C. Distributing Chapter 13 Estate Funds to Creditors After Conversion Undermines the Distinction Between Chapter 13 and Chapter 7 and the Congressional Policy Favoring Chapter 13	28
D. Contrary Policy Arguments Are Unavailing	31
Conclusion	33

TABLE OF AUTHORITIES

Page(s)

CASES

In re Bobroff, 766 F.2d 797 (3d Cir. 1985) 23, 24

Judd v. *Wolfe*, 78 F.3d 110 (3d Cir. 1996) 25

Local Loan Co. v. *Hunt*, 292 U.S. 234 (1934) 25

Marrama v. *Citizens Bank of Mass.*, 549 U.S. 365 (2007) 6

Matter of Lybrook, 951 F.2d 136 (7th Cir. 1991) 23, 24

In re Michael, 699 F.3d 305 (3d Cir. 2012) 26, 33

Perry v. *Commerce Loan Co.*, 383 U.S. 392 (1966) 5, 28, 29

In re Plata, 958 F.2d 918 (9th Cir. 1992) 17

In re Puffer, 674 F.3d 78 (1st Cir. 2012) 2

Toibb v. *Radloff*, 501 U.S. 157 (1991) 19

Travelers Cas. & Sur. Co. of Am. v. *Pac. Gas & Elec. Co.*, 549 U.S. 443 (2007) 14

In re Woolsey, 696 F.3d 1266 (10th Cir. 2012) 2

STATUTES AND RULES

Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106 (1994) 2, 10, 23, 24

11 U.S.C. § 103(b) 28

11 U.S.C. § 103(i) 10, 20, 21, 28

11 U.S.C. § 109(e) 3

11 U.S.C. § 301 3

TABLE OF AUTHORITIES—Continued

	Page(s)
11 U.S.C. § 301(a)	19
11 U.S.C. § 303	3, 4
11 U.S.C. § 303(a)	32
11 U.S.C. § 348	22, 23
11 U.S.C. § 348(a)	6, 18
11 U.S.C. § 348(e)	*passim*
11 U.S.C. § 348(f)	19, 22
11 U.S.C. § 348(f)(1)(A)	6, 18, 29
11 U.S.C. § 348(f)(1)(B)	16
11 U.S.C. § 348(f)(1)(C)	22
11 U.S.C. § 348(f)(1)(C)(i)	10, 21
11 U.S.C. § 348(f)(1)(C)(ii)	22
11 U.S.C. § 348(f)(2)	6, 7, 18, 24
11 U.S.C. § 521(a)(4)	14
11 U.S.C. § 522(d)(1)	27
11 U.S.C. § 522(d)(2)	27
11 U.S.C. § 523	26
11 U.S.C. § 541(a)	3, 14
11 U.S.C. § 541(a)(1)	3
11 U.S.C. § 541(a)(6)	3
11 U.S.C. § 701	3
11 U.S.C. § 701(a)(1)	6
11 U.S.C. § 701(b)	6
11 U.S.C. § 702	3, 6
11 U.S.C. § 704(a)(1)	3, 14
11 U.S.C. § 704(a)(9)	14
11 U.S.C. § 707(b)(1)	19

TABLE OF AUTHORITIES—Continued

	Page(s)
11 U.S.C. § 722	16
11 U.S.C. § 726	3
11 U.S.C. § 727	3
11 U.S.C. § 1302	4
11 U.S.C. § 1302(b)(1)	14
11 U.S.C. § 1306(a)	4
11 U.S.C. § 1306(a)(2)	16
11 U.S.C. § 1306(b)	5
11 U.S.C. § 1307(a)	*passim*
11 U.S.C. § 1307(b)	5, 20
11 U.S.C. § 1321	4, 19
11 U.S.C. § 1322	20
11 U.S.C. § 1322(a)(1)	4, 13
11 U.S.C. § 1325	20
11 U.S.C. § 1325(a)(4)	4, 5
11 U.S.C. § 1325(a)(5)	4, 5
11 U.S.C. § 1326(c)	4, 13
11 U.S.C. § 1327	17, 20
11 U.S.C. § 1327(b)	*passim*
11 U.S.C. § 1328(a)	26
11 U.S.C. § 1329(a)	5
11 U.S.C. § 1329(a)(1)	5, 33
Fed. R. Bankr. P. 1017(f)(3)	5
Fed. R. Bankr. P. 1019	13
Fed. R. Bankr. P. 1019(4)	14
Fed. R. Bankr. P. 1019(5)(B)(ii)	14

TABLE OF AUTHORITIES—Continued

Page(s)

OTHER FEDERAL MATERIALS

78 Fed. Reg. 12,089 (2013) 27

H.R. Rep. No. 95-595 (1977) ..... *passim*

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INTEREST OF *AMICUS CURIAE*[1]

The National Association of Consumer Bankruptcy Attorneys ("NACBA") is the only national organization dedicated to serving the needs of consumer bankruptcy

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[1] No counsel for a party authored this brief in whole or in part; no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief; and no person other than *amicus*, its members, and its counsel made such a contribution. The parties' letters consenting to the filing of this brief have been filed with the Clerk.

attorneys and protecting the rights of consumer debtors in bankruptcy. NACBA has achieved national recognition for, among other things, filing amicus briefs in this Court and federal courts of appeals across the Nation. Many notable decisions have explicitly relied on NACBA's briefs. *E.g.*, *In re Woolsey*, 696 F.3d 1266, 1279 (10th Cir. 2012); *In re Puffer*, 674 F.3d 78, 80 (1st Cir. 2012).

From its work on behalf of consumer debtors, NACBA has developed extensive knowledge of, and unique insights into, the statutory provisions and policy considerations presented by this case. NACBA understands that Congress amended the Bankruptcy Code in the Bankruptcy Reform Act of 1994 (the "1994 Amendments") to ensure that, when a debtor converts a bankruptcy filing from Chapter 13 to Chapter 7 in good faith, undistributed post-petition funds in the Chapter 13 estate go to the debtor. The text, structure, and history of the relevant Bankruptcy Code provisions, as well as equitable considerations and public policy, confirm that interpretation.

STATEMENT

I. STATUTORY FRAMEWORK

The Bankruptcy Code provides several avenues for people and entities weighed down by debt to repay their creditors to the extent they are able, receive a discharge of most remaining debts, and exit bankruptcy with a clean financial slate. This case involves two options Congress has provided for individual debtors—Chapter 7 and Chapter 13. Chapter 13, the chapter under which petitioner Charles Harris originally filed, provides for repayment of debts from a debtor's future earnings. Chapter 7, by contrast, provides for repayment of debts by liquidating a debtor's existing non-exempt assets. Because Chapter 13 is often less disruptive to the debtor

and can provide greater relief to creditors, Congress has long sought to encourage debtors to take advantage of that option. Among other things, Congress has permitted debtors who pursue Chapter 13 to later convert to Chapter 7 without penalty in the event Chapter 13 does not work out.

A. Chapter 7

In a bankruptcy under Chapter 7, debts are paid by liquidating the debtor's non-exempt assets. A debtor can voluntarily file for Chapter 7 bankruptcy, 11 U.S.C. §301, but creditors can also force a debtor into Chapter 7 bankruptcy, *id.* §303.

Filing a bankruptcy petition under any chapter creates an "estate." 11 U.S.C. §541(a). Subject to certain exceptions, the Chapter 7 estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case"—that is, the debtor's pre-petition assets. *Id.* §541(a)(1). The Chapter 7 estate does *not* include the debtor's post-petition earnings for services performed after commencement of the case. *Id.* §541(a)(6).

Chapter 7 provides for appointment of a trustee, 11 U.S.C. §§701, 702, who collects and sells the estate property, *id.* §704(a)(1), and distributes the proceeds to creditors in accordance with the priorities set by the Bankruptcy Code, *id.* §726. Following those steps, for a consumer debtor, most debts are discharged. *Id.* §727. Chapter 7 bankruptcy thus gives the debtor a fresh start, but often at the price of losing a home or other assets.

B. Chapter 13

Chapter 13 is a debt restructuring program available to certain debtors with steady income. 11 U.S.C. §109(e). It differs from Chapter 7 in two key respects. First,

Chapter 13 is completely voluntary. A debtor must *elect* to petition for bankruptcy under Chapter 13. See *id.* §303 (limiting involuntary bankruptcy cases to Chapters 7 and 11 "only"). Second, Chapter 13 permits debtors to repay debts using their "future income" rather than proceeds from the sale of their assets. *Id.* §1322(a)(1). The Chapter 13 estate thus includes, in addition to a debtor's non-exempt assets at the time of filing, post-petition property that the debtor acquires or earns "after commencement of the case, but before the case is * * * converted to a case under chapter 7." *Id.* §1306(a). Creditors are typically paid from the debtor's post-petition earnings.

Like a Chapter 7 trustee, a Chapter 13 trustee is responsible for distributing estate property to creditors. See 11 U.S.C. §1302. Under Chapter 13, however, that distribution is made under a payment plan the debtor prepares. *Id.* §1321. The plan must provide for submission of part of the debtor's "future earnings * * * to the supervision and control of the [Chapter 13] trustee"; the trustee, in turn, distributes the money to creditors according to the confirmed plan. *Id.* §§1322(a)(1), 1326(c). To obtain confirmation from the bankruptcy court, the plan must provide for paying allowed secured claims in full or surrendering the collateral (unless the creditor holding the claim consents to different treatment), and for paying each unsecured creditor at least as much as it would have received under a Chapter 7 liquidation. *Id.* §1325(a)(4), (5).

Chapter 13 establishes a default rule that "the confirmation of a plan vests all of the property of the estate in the debtor," unless "otherwise provided in the plan or the order confirming the plan." 11 U.S.C. §1327(b). After confirmation, a Chapter 13 plan "may be modified, upon

request of the debtor, the trustee, or the holder of an allowed unsecured claim." *Id.* § 1329(a). Among other things, a plan may be modified to "increase or reduce the amount of payments on claims of a particular class [of creditors] provided for by the plan." *Id.* § 1329(a)(1).

Chapter 13 offers significant advantages over Chapter 7 to debtors and creditors alike. Because creditors are paid out of the debtor's future earnings, the debtor is able to keep existing assets, see 11 U.S.C. § 1306(b)—most importantly, a house—and protect those assets from liquidation. Creditors also benefit. By law, the confirmed Chapter 13 plan must give them at least as much as they would receive under a Chapter 7 liquidation. *Id.* § 1325(a)(4), (5). And in practice creditors often receive more under Chapter 13, particularly where a debtor has regular income but no assets subject to liquidation. In light of those advantages, Congress has expressed a strong policy of encouraging debtors to take advantage of Chapter 13 where possible. See *Perry* v. *Commerce Loan Co.*, 383 U.S. 392, 395 (1966); H.R. Rep. No. 103-835, at 57 (1994).

C. Conversion from Chapter 13 to Chapter 7

Consistent with its policy of encouraging debtors to choose Chapter 13, Congress has made it easy for debtors to fall back on Chapter 7 in the event Chapter 13 does not work out. The Bankruptcy Code grants a Chapter 13 debtor the non-waivable right to convert a Chapter 13 case to a Chapter 7 case "at any time" by filing a notice with the court. 11 U.S.C. § 1307(a).[2] No motion or court order is necessary. Fed. R. Bankr. P. 1017(f)(3).

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[2] A Chapter 13 debtor similarly may dismiss the case "at any time." 11 U.S.C. § 1307(b).

Conversion "does not commence a new bankruptcy case." *Collier on Bankruptcy* ¶348.02 (16th ed.). Rather, it *transforms* the debtor's pending case from one under Chapter 13 into one under Chapter 7. See 11 U.S.C. §348(a) (conversion "does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief"). Conversion significantly changes how the case proceeds thereafter.

First, conversion to Chapter 7 automatically "terminates the service" of the Chapter 13 trustee, who is replaced by a Chapter 7 trustee. 11 U.S.C. §348(e); see *id.* §§701(a)(1), (b), 702. Second, conversion transforms the estate from a Chapter 13 estate to a Chapter 7 estate. As discussed above, a Chapter 13 estate includes the debtor's post-petition earnings while a Chapter 7 estate does not. The statute addresses that incongruity by providing that, in general, the "property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition," provided the property "remains in the possession of or * * * under the control of the debtor on the date of conversion." *Id.* §348(f)(1)(A). Thus, after conversion, the estate generally consists of the same property that would have been included in the estate had the debtor filed under Chapter 7 in the first place, and excludes property the debtor acquired after filing the Chapter 13 petition.

Congress created an exception to that general rule for "bad faith" conversions. If the debtor converts in bad faith—*e.g.*, if the debtor "fraudulently conceal[s] significant assets," *Marrama* v. *Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007)—the Chapter 7 estate will consist of the debtor's property "as of the date of conversion," 11 U.S.C. §348(f)(2). Thus, only where a debtor acts in bad faith are post-petition assets considered "property of the

estate in the converted case" and subject to distribution to creditors after conversion. *Ibid.*

II. Proceedings Below

Like many Americans in recent years, Charles Harris fell behind on his mortgage in 2010. He also carried a number of other debts. Harris had no non-exempt assets that could be liquidated to pay his creditors under Chapter 7, but he still had regular income. Given his circumstances, Harris sought to make good on his obligations by restructuring his debts under Chapter 13.

Harris filed a voluntary petition for Chapter 13 bankruptcy and proposed a plan for paying his creditors in full. J.A. 26-39. Under the plan, Harris would surrender his car to his auto lender and resume making scheduled payments to his mortgage lender. J.A. 34. His other debts would be restructured and paid off over 60 months using his future income. J.A. 26-27, 38. To accomplish that, $530 would be deducted from Harris's wages each month and submitted to the Chapter 13 trustee, respondent Mary Viegelahn. J.A. 37-38. The trustee, in turn, would distribute that money to Harris's creditors according to the plan's schedule. J.A. 27.

The confirmation order displaced Chapter 13's default rule that "confirmation of a plan vests all of the property of the estate in the debtor," 11 U.S.C. § 1327(b), providing that "[a]ll property of the estate * * * shall not revest in the Debtor." J.A. 48. The order further provided that "[s]uch property as may revest in the Debtor shall so revest * * * upon * * * conversion." *Ibid.* In other words, in the event Harris converted his case to Chapter 7, any property that did not become part of the Chapter 7 estate would then revest in Harris.

Regrettably, Harris was unable to keep current with his scheduled mortgage payments. In November 2010, his mortgage lender received permission to foreclose on Harris's house. Pet. App. 4a. Thereafter, the trustee stopped distributing the $352 of Harris's monthly wage deductions that were earmarked for the lender, as the plan required. See J.A. 28-29, 34. No other creditor sought to modify the plan or to have those funds redistributed to other creditors. Nor did the trustee. Those funds thus accumulated as Harris continued to have deductions from his wages submitted to the trustee. Pet. App. 4a.

After about a year of continuing to pay under the Chapter 13 plan despite losing his house, in November 2011 Harris exercised his right to convert his case to Chapter 7. Pet. App. 4a. That conversion automatically "terminate[d] the service of [the Chapter 13] trustee." 11 U.S.C. §348(e). The next month, Harris's newly appointed Chapter 7 trustee reported that Harris had no non-exempt property. J.A. 8. Harris's remaining creditors thus received nothing from the Chapter 7 estate, although Harris had already paid about $6,000 under the Chapter 13 plan. Chapter 13 Standing Trustee's Final Report & Account 3, ECF No. 36. The bankruptcy court later granted Harris a discharge of his debts.

Following the conversion, the former Chapter 13 trustee still held more than $4,300 of Harris's wages that had been earmarked for his mortgage lender. Pet. App. 4a. She distributed those funds to Harris's other creditors on December 1, 2011—after the conversion to Chapter 7 and the concomitant termination of her service. *Ibid.*

Harris moved to compel the refund of the money. Pet. App. 5a. The bankruptcy court granted the motion, and the district court affirmed. Pet. App. 29a-49a. The Fifth

Circuit reversed, holding that, despite the conversion of Harris's case from Chapter 13 to Chapter 7, the former Chapter 13 trustee was authorized to distribute Harris's post-petition wages to his Chapter 13 creditors. Pet. App. 1a-28a.

SUMMARY OF ARGUMENT

I.A. The Bankruptcy Code's plain text controls this case. "Conversion" of a Chapter 13 case to Chapter 7 automatically "terminates the service" of the Chapter 13 trustee. 11 U.S.C. §348(e). As a result, the now-former Chapter 13 trustee no longer has authority to carry out the quintessential service performed by a Chapter 13 trustee—distributing the debtor's post-petition earnings to creditors. While the former Chapter 13 trustee may perform certain ministerial tasks after conversion, nothing authorizes a former trustee to distribute property to creditors or otherwise affect the debtor's and creditors' respective substantive rights.

Chapter 13 reinforces that result by establishing a default rule that the estate property vests in the debtor upon confirmation of the plan. Earnings submitted to the Chapter 13 trustee do not vest in creditors until they are actually distributed to creditors. Any undistributed funds at the time of conversion thus rightfully belong to the debtor.

B. The Bankruptcy Code's structure supports that reading of Chapter 13. A Chapter 7 estate following conversion normally includes only the debtor's property at the time of the Chapter 13 filing. Payments to creditors after conversion to Chapter 7 are thus made from the debtor's *pre-petition* assets. The Code contemplates that a debtor's *post-petition* assets will be distributed to creditors after conversion only where the debtor acted in bad faith. To permit a trustee to distribute a debtor's post-

petition earnings to creditors after a *good-faith* conversion defies that design.

Chapter 13 is also designed to be completely voluntary. Debtors cannot be forced to enter, or to remain in, Chapter 13 cases against their will. The decision below improperly tethers debtors to Chapter 13 cases after they have withdrawn their consent to be subject to Chapter 13.

The Fifth Circuit characterized the former trustee's post-conversion distributions to creditors as payments "pursuant to the Chapter 13 plan." Pet. App. 2a. But a Chapter 13 plan ceases to have legal effect once the case is converted to one under Chapter 7, because "Chapter 13 * * * applies only in a case under such chapter." 11 U.S.C. § 103(i).

Finally, some provisions of the Bankruptcy Code determine rights based on payments made "as of the date of conversion." 11 U.S.C. § 348(f)(1)(C)(i). Congress plainly did not contemplate that a former Chapter 13 trustee would pay creditors *after* conversion.

C. The Bankruptcy Code's legislative history confirms that post-petition property belongs to the debtor following good-faith conversion. Congress sought to encourage debtors to attempt Chapter 13 bankruptcy, and it recognized that enabling creditors to obtain post-petition property following conversion would be a serious disincentive to pursuing Chapter 13. The 1994 Amendments clarified that, following conversion, post-petition property would not become part of the Chapter 7 estate (and thus would not be distributed to creditors) absent bad faith. Permitting distribution of post-petition funds after conversion would recreate the same disincentive that Congress sought to eliminate.

II.A. Returning undistributed Chapter 13 funds to debtors after conversion to Chapter 7 will go a long way toward giving honest but unfortunate debtors the "fresh start" the Bankruptcy Code was designed to provide. The few thousand dollars at issue in this and similar cases will help debtors get back on their feet as they exit bankruptcy.

B. The rule adopted below gives debtors an incentive to skip Chapter 13 and proceed directly to Chapter 7. But Chapter 13 provides benefits to both debtors and creditors. It allows debtors to protect some assets and offers creditors more recovery. The decision below ignores that reality.

C. By allowing creditors to recover undistributed Chapter 13 funds after conversion to Chapter 7, the Fifth Circuit's rule effectively requires debtors to lose post-petition income under Chapter 13 at the same time that other assets are liquidated under Chapter 7. That undermines Congress's choice to keep Chapters 7 and 13 mutually exclusive and cannot be reconciled with Congress's preference for Chapter 13 over Chapter 7.

D. The Fifth Circuit's policy arguments do not withstand scrutiny. The court posited that its rule will not deter debtors from proceeding under Chapter 13. But the prospect of losing undistributed funds to creditors after conversion, rather than recovering that money, surely makes Chapter 13 less attractive.

The court also argued that giving creditors undistributed funds would prevent debtors from receiving a windfall. But that ignores Congress's decision to allow debtors to trade their Chapter 13 obligations for different Chapter 7 obligations "at any time." 11 U.S.C. §1307(a). And it overlooks the fact that every creditor here re-

ceived everything it expected to receive until the time of conversion.

ARGUMENT

I. THE BANKRUPTCY CODE REQUIRES THAT UNDISTRIBUTED POST-PETITION FUNDS IN A FORMER CHAPTER 13 ESTATE BE RETURNED TO THE DEBTOR AFTER GOOD-FAITH CONVERSION TO CHAPTER 7

The text, structure, and history of the relevant Bankruptcy Code provisions all point to the same conclusion: Harris, not his creditors, was entitled to any post-petition funds in the former Chapter 13 trustee's hands upon the conversion of Harris's case to Chapter 7.

A. The Statutory Text Requires the Former Chapter 13 Trustee To Return Undistributed Funds to the Debtor After Conversion, Not To Continue To Distribute Them to Creditors

Two statutory provisions independently decide the question presented. Section 348(e) provides that conversion to Chapter 7 automatically "terminates the service" of the Chapter 13 trustee, stripping the now-former trustee of power to make further distributions to creditors. And Section 1327(b) establishes a default rule that post-petition earnings (and all other estate property) vest in the debtor upon confirmation of a Chapter 13 plan, demonstrating that the debtor is entitled to those funds upon conversion.

1. *Conversion "Terminates" the Chapter 13 Trustee's Authority To Distribute Funds to Creditors*

a. The text of the Bankruptcy Code makes clear that a Chapter 13 trustee has no authority to distribute funds to creditors after conversion. The statute assigns certain duties and responsibilities to a Chapter 13 trustee with

respect to the debtor's post-petition earnings: During the Chapter 13 case, she must exercise "supervision and control" over the portion of the debtor's earnings that are submitted to her, 11 U.S.C. §1322(a)(1), and "make payments to creditors under the plan," *id.* §1326(c). Conversion to Chapter 7, however, automatically "terminates the service of any trustee * * * that is serving in the case before such conversion." *Id.* §348(e). Thus, upon conversion, the Chapter 13 trustee becomes the *former* Chapter 13 trustee. She is accordingly stripped of the power to control the debtor's earnings and distribute them to creditors. See *Collier on Bankruptcy* ¶348.02[1]. Nothing in the Bankruptcy Code authorizes a *former* trustee to distribute funds to creditors or otherwise carry out a *defunct* Chapter 13 plan. Contrast 11 U.S.C. §1326(c) ("the trustee shall make payments to creditors under the plan"). It follows that any post-petition earnings in the former Chapter 13 trustee's possession after conversion cannot be distributed to creditors.

b. The Fifth Circuit deemed the termination of the Chapter 13 trustee's service immaterial because the former trustee must still perform certain duties to "'clean-up and finalize'" administration of the Chapter 13 estate. Pet. App. 11a. The court found "'no logical reason why distribution of funds pursuant to the previously confirmed reorganization plan cannot be included as one of those administrative duties.'" *Ibid.* The reason is that a former Chapter 13 trustee's remaining administrative duties are both extremely limited in scope and required by statute, while continued distribution of the debtor's earnings to creditors is neither.

Federal Rule of Bankruptcy Procedure 1019 enumerates two specific tasks the former Chapter 13 trustee must perform after conversion. First, she must "turn

over to the chapter 7 trustee all records and property of the estate" still in her hands. Fed. R. Bankr. P. 1019(4). That obligation does not reflect any continuing authority held by the former Chapter 13 trustee, but rather the superseding power of the new Chapter 7 trustee to "collect" the property of the Chapter 7 estate, 11 U.S.C. §704(a)(1), "wherever located and by whomever held," *id.* §541(a). If anything, the "rule recognizes that the chapter 13 trustee has no further duties with respect to estate property once conversion has occurred." *Collier on Bankruptcy* ¶348.02[1]. A private party holding the same property would be under the same obligation to turn it over to the new Chapter 7 trustee. Cf. 11 U.S.C. §521(a)(4) (debtor must "surrender to the trustee all property of the estate and any recorded information * * * relating to property of the estate").

Second, the former Chapter 13 trustee must "file and transmit to the United States trustee a final report and account." Fed. R. Bankr. P. 1019(5)(B)(ii). That ministerial duty is also rooted in the statute: Every trustee is required to "make a final report and file a final account of the administration of the estate with the court and with the United States trustee," 11 U.S.C. §704(a)(9); see *id.* §1302(b)(1) (duty applies to Chapter 13 trustees), and the Chapter 13 trustee can make a "final" report and account only after the Chapter 13 case has concluded.

Those post-conversion responsibilities at most show that Congress contemplated two narrow, procedural exceptions to the rule that conversion terminates the service of a Chapter 13 trustee. By contrast, nothing in the Bankruptcy Code or Rules suggests that a former Chapter 13 trustee retains the authority to distribute funds to creditors. That is fatal to any claim of such power. See *Travelers Cas. & Sur. Co. of Am.* v. *Pac. Gas & Elec. Co.*,

549 U.S. 443, 453 (2007) ("'[W]here Congress has intended to provide . . . exceptions to provisions of the Bankruptcy Code, it has done so clearly and expressly.'"). And it is no wonder that Congress did not create such an exception: Distribution of funds to creditors is the quintessential "service" rendered by the trustee in a Chapter 13 case. If that power were not "terminate[d]" upon conversion to Chapter 7, 11 U.S.C. §348(e), it is hard to imagine what would be.

c. The Fifth Circuit quibbled that, if a trustee's services were "literally" terminated by conversion, then the former Chapter 13 trustee "would be unable to return [undistributed] funds" to *anyone*, including the debtor. Pet. App. 10a. But the former trustee must hand over the funds to someone; she does not get to keep them for herself. And even if returning funds to the debtor were considered a "service," it is different in kind from distributing funds to creditors. Returning the funds has no effect on the debtor's and creditors' respective substantive rights; the debtor continues to owe the same debt as he did when the trustee held the funds. Cf. Pet. App. 17a (creditors have no vested right to receive undistributed funds before or after conversion). Distributing the funds, however, changes the debtor's and creditors' rights; the payment extinguishes part of the debt to the creditors who receive payment.[3]

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[3] Extinguishing that unsecured debt is not necessarily to the debtor's advantage. While in some cases the extinguished debt would have been paid anyway with liquidation proceeds under Chapter 7, in other cases (like this one) there will be no assets subject to liquidation, and the debtor would have been entitled to discharge of the debt without any further payment.

Additionally, a debtor generally receives no credit for Chapter 13 payments if the debtor seeks to redeem property securing a claim

If "terminat[ion]" of the Chapter 13 trustee's service has any meaning, it must mean that conversion strips the (former) trustee of the power to reshape parties' substantive rights by continuing to distribute funds to creditors. Returning undistributed funds to the debtor does not affect substantive rights, and so fits comfortably beside the former Chapter 13 trustee's purely procedural post-conversion duties.

2. *Chapter 13 "Vests" Post-Petition Earnings in the Debtor, Not in Creditors*

Chapter 13's text confirms that undistributed post-petition earnings belong to the debtor upon conversion by explicitly vesting post-petition earnings in the debtor. Nothing in the statutory text indicates that creditors have any vested right to Chapter 13 estate property until funds are actually distributed to them.

Chapter 13 establishes a default rule that, "[e]xcept as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor." 11 U.S.C. §1327(b). A debtor's post-petition earnings are plainly "property of the [Chapter 13] estate." *Id.* §1306(a)(2). Court after court—including the Fifth Circuit below—has thus properly concluded that, until funds from the Chapter 13

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after conversion. See 11 U.S.C. §722; *id.* §348(f)(1)(B). For example, if a debtor owes $6,000 on a car worth $2,000 and the former Chapter 13 trustee distributes $1,000 held at the time of conversion to the auto lender, the total debt on the car will be reduced to $5,000, but the debtor will still have to pay the creditor another $2,000 (the car's value) to redeem the car. By contrast, if the former trustee returns the $1,000 to the debtor, the debtor can pay that money to the creditor and redeem the car for only another $1,000. Under the Fifth Circuit's approach, debtors seeking to redeem after conversion are effectively forced to pay twice.

estate are *actually distributed* to creditors, those funds do not belong to creditors. See Pet. App. 16a-18a; *In re Plata*, 958 F.2d 918, 922 (9th Cir. 1992). It follows that any funds that remain undistributed upon conversion to Chapter 7 should be returned to the debtor, their rightful owner.

To be sure, Section 1327's vest-in-the-debtor rule can be displaced where "otherwise provided in the plan or the order confirming the plan." 11 U.S.C. § 1327(b). And the plan and confirmation order in this case did "otherwise provid[e]." But that makes no difference because neither vested the estate property in Harris's *creditors*. The plan provides that, rather than vesting in Harris, "all property of the estate * * * shall remain as property of the estate." J.A. 31. That provision plainly did not vest the estate property in creditors because the estate includes property (such as Harris's non-disposable income and pre-petition assets) that would never go to creditors under the Chapter 13 payment plan. The order confirming the plan, moreover, explicitly provided that "[s]uch property as may revest in the Debtor shall so revest * * * *upon* * * * *conversion*." J.A. 48 (emphasis added). Accordingly, once Harris exercised his right to convert his case to Chapter 7, all of the former Chapter 13 estate property that did not become part of the new Chapter 7 estate revested in him. Undistributed funds in the former Chapter 13 trustee's hands thus should have been returned to Harris upon conversion, the same as if the money had remained vested in him the whole time.

B. The Bankruptcy Code's Structure Confirms That Post-Petition Property Should Go to the Debtor, Not Creditors, After Good-Faith Conversion

The Fifth Circuit's decision also conflicts with the Bankruptcy Code's overall structure. Numerous provisions make clear that, after conversion to Chapter 7, no post-petition earnings may be distributed to creditors absent bad faith, and no distributions at all may be made pursuant to the Chapter 13 plan.

1. *Post-Petition Assets May Be Distributed to Creditors After Conversion Only Where the Debtor Converted in Bad Faith*

A chief distinction between Chapter 7 and Chapter 13 is that, under Chapter 7, creditors are paid using *pre-petition* assets, while under Chapter 13 creditors are paid using *post-petition* assets. See pp. 3-5, *supra*. Congress preserved that distinction in cases that are converted from Chapter 13 to Chapter 7. It provided that the estate property in the converted Chapter 7 case is determined "as of the date of filing of the petition," 11 U.S.C. §348(f)(1)(A), and that "the date of the filing of the petition" continues to be the date of the original Chapter 13 filing, *id.* §348(a). Accordingly, once a debtor converts his case to Chapter 7, money the debtor earned after he filed his Chapter 13 petition is carved out from the estate—and placed off-limits to creditors.

Congress created one narrow exception to that rule, providing that, "if the debtor converts a case under chapter 13 * * * in bad faith," the estate property "shall consist of the property of the estate *as of the date of conversion*." 11 U.S.C. §348(f)(2) (emphasis added). That exception punishes bad-faith conversions by making otherwise-immune post-petition earnings (and other post-

petition assets) available for liquidation and distribution to creditors after conversion to Chapter 7.

The decision below defies that design. Section 348(f) makes clear that post-petition wages should be distributed to creditors after conversion to Chapter 7 *only if the debtor converted in bad faith*. The Fifth Circuit, however, allowed creditors to take post-petition earnings after a *good-faith* conversion. In doing so, it effectively subjected Harris to the penalty for bad-faith conversion without any finding—or even allegation—of bad faith. That is flatly inconsistent with the framework Section 348(f) prescribes, and it will discourage debtors from invoking Chapter 13 as Congress intended.

2. *Chapter 13 Is Designed To Be Completely Voluntary*

In enacting Chapter 13, Congress expressed concern that forcing debtors "to toil for the benefit of creditors" would violate "the Thirteenth Amendment's involuntary servitude prohibition." *Toibb* v. *Radloff*, 501 U.S. 157, 165-166 (1991). Congress thus structured Chapter 13 as a "completely voluntary" repayment program. H.R. Rep. No. 95-595, at 120 (1977).

A debtor cannot be forced into a Chapter 13 repayment plan under any circumstances. Only a debtor may petition for Chapter 13 bankruptcy and file a plan. 11 U.S.C. §§ 301(a), 1321. Even where a debtor initially files under Chapter 7 and the bankruptcy court "finds that the granting of relief would be an abuse" of Chapter 7 in light of the debtor's significant monthly income, the case may be converted to Chapter 13 only "with the debtor's consent." *Id.* § 707(b)(1).

Likewise, a debtor cannot be forced to *stay* in a Chapter 13 case involuntarily. A Chapter 13 debtor has the

right to convert the case to Chapter 7—or dismiss it outright—"at any time." 11 U.S.C. §1307(a), (b). Congress reinforced that right of immediate exit by mandating that "[a]ny waiver * * * is unenforceable." *Ibid.*

Congress thus crafted the Bankruptcy Code to ensure that a debtor's earnings are not applied toward a Chapter 13 repayment plan any longer than the debtor voluntarily submits to the plan. The decision below, however, effectively allows a former Chapter 13 trustee to keep a debtor tethered to a repayment plan against the debtor's will. Any distributions the former trustee makes to creditors after the debtor elects to leave Chapter 13 are *involuntary* payments, in contravention of the statutory design.

3. *A Chapter 13 Plan Cannot Be Applied After Conversion to Chapter 7*

The Fifth Circuit characterized the post-conversion distribution of funds to Harris's creditors as being made "pursuant to the Chapter 13 plan." Pet. App. 2a. Of course, if the former Chapter 13 trustee *did* have authority to distribute the funds, it must have been "pursuant to the Chapter 13 plan"; post-petition funds could not be distributed pursuant to Chapter 7, nor could the former trustee distribute them on a whim, pursuant to nothing. But the Bankruptcy Code makes clear that after conversion there is no longer a "Chapter 13 plan" under which distributions to creditors can be made.

Once a debtor exercises the right to convert to Chapter 7, the Chapter 13 plan immediately ceases to have continuing legal force. That is because the plan draws its legal effect from provisions of Chapter 13, see 11 U.S.C. §§1322, 1325, 1327, and "Chapter 13 * * * applies only in a case under such chapter," *id.* §103(i). After conversion, the case is no longer one under Chapter 13; it is "a case

under Chapter 7." *Id.* §1307(a). Under the Bankruptcy Code's plain terms, Chapter 13 can no longer govern.

The Fifth Circuit recognized that conversion terminates the Chapter 13 plan. Pet. App. 18a. The court nonetheless held that the former Chapter 13 trustee may continue to distribute funds "pursuant to the Chapter 13 plan." Pet. App. 2a. That approach cannot be reconciled with Congress's command that Chapter 13—including its provisions governing repayment plans—may not be "applie[d]" in a case that is not "a case under such chapter." 11 U.S.C. §103(i).

Additionally, the post-conversion distributions here may not have even been made pursuant to the *terms* of the defunct Chapter 13 plan. The plan did not provide for reallocating funds earmarked for the mortgage lender to other creditors after the foreclosure; that is why the funds accumulated in the trustee's hands. Nor was the plan ever modified—before or after conversion—to allow reallocation. It is thus unclear whether anything even *purported* to authorize the former trustee's actions.

4. *The Bankruptcy Code Contemplates That Chapter 13 Distributions Will End upon Conversion*

Some provisions of the Bankruptcy Code expressly turn on the state of affairs as of the date of conversion. For example, a creditor holding security "shall continue to be secured" after conversion "unless the full amount of [the] claim determined under applicable nonbankruptcy law has been *paid in full as of the date of conversion*, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter 13." 11 U.S.C. §348(f)(1)(C)(i) (emphasis added). Similarly, if a pre-bankruptcy default is not "*fully cured* * * * *at the time of*

conversion," after conversion it has the "effect given under applicable nonbankruptcy law." *Id.* §348(f)(1)(C)(ii) (emphasis added).

The decision below, however, raises the prospect of claims that are *not* paid in full "as of the date of conversion," but later *become* paid in full because of a distribution by the former Chapter 13 trustee. Likewise, a default could be *not* fully cured "at the time of conversion," but later *become* cured by a post-conversion distribution. Neither situation is covered by the statute. Post-conversion distributions by a former Chapter 13 trustee thus may interfere with the determination of rights in the Chapter 7 case. At the very least, Section 348(f)(1)(C)'s reference to Chapter 13 payments "as of the date of conversion" makes clear that Congress did not contemplate Chapter 13 payments continuing *after* the date of conversion.

C. The History of Section 348 Confirms That Congress Intended Undistributed Funds in a Chapter 13 Estate To Belong to the Debtor Following Conversion

Section 348's legislative history shows that Congress recognized that allowing creditors to reach post-petition assets in a converted case would often penalize debtors who first invoke Chapter 13 compared to those who initially proceed under Chapter 7. Consistent with its longstanding policy of promoting use of Chapter 13 wherever possible, Congress sought to eliminate that disincentive. The decision below defies that congressional purpose by erecting precisely the same sort of obstacles to invoking Chapter 13 that Congress sought to eliminate two decades ago.

Congress enacted Section 348(f) in 1994 to "resolve a split in the case law about what property is in the bank-

ruptcy estate when a debtor converts from chapter 13 to chapter 7." H.R. Rep. No. 103-835, at 23, 57. Before the 1994 Amendments, federal courts had divided over whether post-petition property became part of the Chapter 7 estate upon conversion from Chapter 13.

In *Matter of Lybrook*, 951 F.2d 136 (7th Cir. 1991), the Seventh Circuit held that the entire Chapter 13 estate became part of the Chapter 7 estate upon conversion, and therefore post-petition assets were available for liquidation and distribution to creditors. *Id.* at 136-138. The Seventh Circuit determined that Section 348, as it then existed, left the court at a "semantic impasse." *Id.* at 137. Troubled by the possibility of "strategic, opportunistic behavior" by debtors using conversion to shield post-petition property from creditors, the court concluded that "the only cure is to rule that the Chapter 13 estate passes unaltered into Chapter 7 upon conversion." *Id.* at 137-138. Thus, in *Lybrook*, land the debtor inherited after his Chapter 13 filing but before conversion to Chapter 7 was deemed part of the Chapter 7 estate and subject to liquidation—even though it would have been excluded had he originally filed under Chapter 7.

In *In re Bobroff*, 766 F.2d 797 (3d Cir. 1985), by contrast, the Third Circuit held that post-petition property did *not* become part of the converted Chapter 7 estate. *Id.* at 799-800, 803. That result, the court explained, "is consonant with the Bankruptcy Code's goal of encouraging the use of debt repayment plans rather than liquidation." *Id.* at 803. "If debtors must take the risk that property acquired during the course of an attempt at repayment will have to be liquidated for the benefit of creditors if chapter 13 proves unavailing, the incentive to give chapter 13—which must be voluntary—a try will be greatly diminished." *Ibid.* Contrary to the Seventh Cir-

cuit's rationale in *Lybrook*, the Third Circuit concluded that "when chapter 13 does prove unavailing no reason of policy suggests itself why the creditors should not be put back in precisely the same position as they would have been had the debtor never sought to repay his debts." *Ibid.*

In the 1994 Amendments, Congress came down squarely in favor of debtors who try Chapter 13. It rejected "cases such as *Matter of Lybrook*, and adopt[ed] the reasoning of *In re Bobroff*." H.R. Rep. No. 103-835, at 57 (citations omitted). In endorsing *Bobroff*, Congress recognized that *Lybrook*'s rule allowing creditors to reach post-petition assets after conversion to Chapter 7 would pose a "serious disincentive to chapter 13 filings." *Ibid.*

At the same time, Congress was not deaf to the Seventh Circuit's concerns—echoed below—that debtors might use conversion "opportunistic[ally]" to stymie their creditors. *Lybrook*, 951 F.2d at 137; see Pet. App. 28a. Congress included Section 348(f)(2), the "bad faith" exception, as an essential component of the revised statutory scheme. As the House Report explains, Section 348(f)(2) "gives the court discretion, in a case in which the debtor has abused the right to convert and converted in bad faith, to order that all property held at the time of conversion shall constitute property of the estate in the converted case." H.R. Rep. No. 103-835, at 57. Absent bad faith, however, Congress intended that post-petition assets be off-limits to creditors after conversion from Chapter 13 to Chapter 7.

Allowing a former Chapter 13 trustee to distribute the debtor's post-petition earnings to creditors after conversion defies that congressional intent. It creates a "serious disincentive to chapter 13 filings," H.R. Rep. No. 103-

835, at 57, by exposing more of an honest debtor's assets to creditors without offering any discernible benefit to the debtor. The decision below thus erects the same disincentives to Chapter 13 that Congress sought to abolish.

II. THE EQUITIES AND PUBLIC POLICY FAVOR RETURNING UNDISTRIBUTED CHAPTER 13 ESTATE FUNDS TO THE DEBTOR AFTER CONVERSION

Equitable considerations and public policy confirm that Harris, not his creditors, was entitled to any post-petition funds in the former Chapter 13 trustee's hands when he chose to convert to Chapter 7.

A. Equitable Considerations Favor the Debtor Retaining Undistributed Chapter 13 Funds

People declare bankruptcy for a variety of reasons. Most bankruptcies, however, are caused by a sudden setback: "a job loss, failure of a small business, a cutback in hours worked, or some other income interruption." Teresa A. Sullivan, *et al.*, *Less Stigma or More Financial Distress: An Empirical Analysis of the Extraordinary Increase in Bankruptcy Filings*, 59 Stan. L. Rev. 213, 220 (2006). Those precipitating events reduce the ability of individuals and families to pay their debts, forcing some into bankruptcy.

The "primary purpose" of the Bankruptcy Code is to "afford[] debtors a fresh start." *Judd* v. *Wolfe*, 78 F.3d 110, 117 (3d Cir. 1996). By entering and exiting bankruptcy, the "honest but unfortunate debtor" is supposed to obtain "a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt." *Local Loan Co.* v. *Hunt*, 292 U.S. 234, 244 (1934).

Honest but unfortunate debtors still face significant hurdles even after emerging from Chapter 7. Debtors

are often strapped for cash. One major study found that the median household income of bankruptcy filers in 2001 was $20,172, less than half the nationwide median income. Sullivan, *et al.*, *supra*, at 223. Ninety-four percent of filers had incomes below the nationwide median, and 41% were below the federal poverty line. *Id.* at 223 n.35.

The Chapter 7 liquidation process, moreover, neither relieves debtors from the burdens of non-dischargeable debts like tax debts or student loans, see 11 U.S.C. §523, nor frees debtors from ongoing payments on mortgages or car loans, see *id.* §1328(a). And it does not alleviate the financial hardships that led debtors to file for bankruptcy in the first place. As a result, individuals emerging from Chapter 7 bankruptcy often continue to struggle to pay for basic obligations, such as utilities, a car, housing, taxes, education, and medical expenses. See Katherine Porter & Deborah Thorne, *The Failure of Bankruptcy's Fresh Start*, 92 Cornell L. Rev. 67, 85 (2006).

That is particularly true for debtors who convert to Chapter 7 after attempting a Chapter 13 payment plan. Such debtors will not merely face financial hardship common to all debtors emerging from bankruptcy. They also will have depleted a substantial portion of their income during the unsuccessful Chapter 13 case. More so than debtors who never attempt Chapter 13, debtors who convert will have spent months or years of income toward paying off creditors. In doing so, debtors often put off household expenses, and face the consequences after they emerge from bankruptcy.

Providing undistributed Chapter 13 funds to debtors who choose Chapter 7 will go a long way toward giving debtors the fresh start the Bankruptcy Code was designed to provide. The $4,300 at issue in this case—like the $9,200 at issue in *In re Michael*, 699 F.3d 305, 307 (3d

Cir. 2012)—might seem like a relatively small amount of money to some. But it represents a substantial portion of the typical bankruptcy filer's annual income, and will help filers exiting bankruptcy meet the challenges of paying for basic necessities and non-dischargeable debt. The Third Circuit's rule embraces that reality. The Fifth Circuit's does not.

B. Proceeding Under Chapter 13 Offers Numerous Benefits to Debtors and Creditors Alike

A rule that precludes debtors from recovering their undistributed funds will prompt debtors to forego Chapter 13 and declare Chapter 7 bankruptcy at the outset. Proceeding under a Chapter 13 plan, however, offers significant advantages to debtors with steady income. "[D]eveloping a plan of repayment under Chapter 13, rather than opting for liquidation under Chapter 7, * * * permits the debtor to protect his assets." H.R. Rep. No. 95-595, at 118. Chief among the concerns of consumer debtors is protecting their homes, cars, and other necessities. While some of that property is exempt from the Chapter 7 estate, those exemptions are subject to strict caps. See, *e.g.*, 11 U.S.C. §522(d)(1), (2); 78 Fed. Reg. 12,089, 12,090 (2013) ($22,975 homestead exemption and $3,675 motor vehicle exemption). For example, a debtor who has home equity exceeding the applicable homestead exemption cap may see his house sold by the Chapter 7 trustee. Similarly, a debtor who has a paid-off vehicle worth more than the vehicle exemption may see it liquidated. Proceeding under Chapter 13 allows a debtor to protect these basic assets by paying creditors with future earnings instead.

Chapter 13 also provides other benefits to debtors. It "protects a debtor's credit standing far better than a straight bankruptcy." H.R. Rep. No. 95-595, at 118.

Post-bankruptcy, creditors frequently view an individual who tried to pay off debts under Chapter 13 more favorably than one who opted for Chapter 7. *Ibid.*

At the same time, Chapter 13 offers significant advantages for creditors. "The benefit to creditors is self-evident: their losses will be significantly less than if their debtors opt for straight bankruptcy" under Chapter 7. H.R. Rep. No. 95-595, at 118. As this Court recognized in *Perry*, "wage earners ordinarily have little or no assets available for distribution in straight bankruptcy" under Chapter 7. 383 U.S. at 396. Accordingly, recoveries under Chapter 13 "represent settlements which * * * creditors [would be] unable to obtain" under Chapter 7. *Ibid.* (discussing former Chapter XIII).

C. Distributing Chapter 13 Estate Funds to Creditors After Conversion Undermines the Distinction Between Chapter 13 and Chapter 7 and the Congressional Policy Favoring Chapter 13

Chapter 7 and Chapter 13 are fundamentally different types of cases. "In a [Chapter 7] liquidation case, the debtor must surrender his nonexempt assets for liquidation and sale by the trustee. Under Chapter 13, the debtor may retain his property by agreeing to repay his creditors" from his future earnings. H.R. Rep. No. 95-595, at 118. Congress designed these two options to be mutually exclusive. *Id.* at 6 ("Cases are filed under only one of the four operative chapters."); see 11 U.S.C. §103(b) (relevant provisions "of chapter 7 * * * apply only in a case under such chapter"); *id.* §103(i) ("Chapter 13 * * * applies only in a case under such chapter."); *id.* §1307(a) (conversion changes "a case under this chapter [13] to a case under chapter 7"). Consequently, the debtor has two distinct and exclusive ways to discharge debts:

liquidate pre-petition assets, or give up part of his post-petition income.

Giving undistributed Chapter 13 funds to creditors after conversion requires debtors to liquidate pre-petition assets *and* give up post-petition income *at the same time*. Debtors must surrender in the Chapter 7 case property they would have surrendered if they had filed under Chapter 7 initially. 11 U.S.C. §348(f)(1)(A). But they must also surrender additional post-petition income—the undistributed Chapter 13 funds—under the guise of the defunct Chapter 13 plan. Debtors effectively must pay creditors under two bankruptcies simultaneously. Faced with the reality that thousands of dollars of undistributed funds may disappear even *after* they choose to convert to Chapter 7, many debtors will have an incentive to skip Chapter 13.

That incentive undermines the congressional preference for Chapter 13 over Chapter 7. Congress has clearly expressed its intention that Chapter 13 proceedings be the first recourse for bankrupt debtors: While "use of the bankruptcy law should be a last resort," "if it is used, debtors should attempt repayment under Chapter 13." H.R. Rep. No. 95-595, at 118. That preference for payment plans for wage earners dates back to Chapter XIII, the predecessor to Chapter 13. See *Perry*, 383 U.S. at 396-397. A rule that pays undistributed Chapter 13 funds to creditors rather than debtors—deterring some debtors from petitioning under Chapter 13—cannot be reconciled with that preference.

Filing under Chapter 13 is already risky. If a debtor cannot make all required payments under the plan, he may have no choice but to convert to Chapter 7. In that case, the debtor will end up paying more than he would have under an initial Chapter 7 filing: He will lose the

property he had originally hoped to preserve, plus any income paid to creditors during the Chapter 13 proceeding. Under the decision below, debtors will face yet another risk—that any funds held by the terminated trustee under the failed Chapter 13 plan will nonetheless be distributed to creditors even after conversion. That gratuity to creditors, with no corresponding benefit to the debtor, is a strong disincentive to attempt Chapter 13 in the first instance.

Distributing remaining Chapter 13 estate property to creditors, moreover, is inconsistent with Chapter 13's general policy. When Congress set up the modern versions of Chapters 7 and 13 in 1978, it did so in response to "the tremendous rise in the amount of credit outstanding for personal, family, or household purposes." H.R. Rep. No. 95-595, at 116. As the House Report explained:

> Often, these consumers are able to keep up with their obligations in normal times, but have saved very little for emergencies or unexpected events. When a family member takes seriously ill or when the breadwinner is laid off from his job, a financial crisis ensues. In many cases, a young family of two, both working, incur a large amount of debt. If the wife stops working because of pregnancy, the family loses nearly half of its income, and has an extra member to feed and shelter. The family will go deeper and deeper into debt to support themselves, until finally the roof falls in.

Ibid. Before 1978, the "overly stringent and formalized" existing law created disincentives for debtors trying to work out a repayment plan, and even when debtors attempted such plans, the plans sometimes became "the closest thing there is to indentured servitude." *Id.* at 117.

The purpose of Chapter 13 was to bring relief to these consumer debtors. H.R. Rep. No. 95-595, at 117. The decision below, however, applied a creditor-friendly rule that gives creditors a windfall beyond the extra funds they already receive when a debtor tries, but fails, to complete a Chapter 13 plan.

D. Contrary Policy Arguments Are Unavailing

The Fifth Circuit urged that its rule "will not discourage any individuals from proceeding in Chapter 13, since it simply requires them to fully honor their obligation under a confirmed plan." Pet. App. 24a. Not so. The relevant inquiry looks at a debtor's incentives *before* the date of petition, not after a plan is confirmed. Under the proper rule, a bankruptcy attorney advising a client considering Chapter 13 bankruptcy could say: "If it does not work out, *anything not already out the door to creditors goes back to you.*" Under the Fifth Circuit's rule, however, the attorney would advise: "If it does not work out, *anything you've already handed over to the trustee gets paid to creditors anyway.*" Chapter 13 is plainly less attractive under the Fifth Circuit's rule.

Moreover, the Fifth Circuit's invocation of debtors "fully honor[ing] their obligation" under the Chapter 13 plan is inconsistent with Congress's choice to allow debtors to convert a Chapter 13 case to a Chapter 7 case "at any time." 11 U.S.C. §1307(a). When a debtor converts, he is electing to *trade* his obligations under the Chapter 13 plan for different obligations under Chapter 7. The Chapter 13 plan thus no longer obligates the debtor. That is a choice Congress allowed when it permitted debtors to convert to Chapter 7 at any time. That choice should be respected.

The Fifth Circuit also worried that, "'if the undistributed funds revert to [the debtor], instead of being dis-

tributed to creditors in accordance with the plan's terms, [the debtor] would receive a windfall.'" Pet. App. 24a-25a. But that assumes creditors have greater entitlement to the funds. Under the Bankruptcy Code, creditors have no entitlement to recover beyond what they could under Chapter 7. Congress could have chosen to require debtors to proceed through Chapter 13 before Chapter 7. But it did not, citing the "policy grounds" that "[a]n unwilling debtor is less likely to retain his job or to cooperate in the repayment plan." H.R. Rep. No. 95-595, at 120.

Because only Chapter 7 (and Chapter 11) cases can be filed involuntarily, see 11 U.S.C. §303(a), any additional recovery that accrues to creditors by virtue of Chapter 13 does so only because of the voluntary choices of debtors. In other words, debtors can choose to repay more of their debt, for mutually beneficial reasons, but they have no obligation under the Bankruptcy Code to do so. Creditors have no entitlement to a recovery that debtors can choose to pay or not. Nor does such an entitlement arise once a debtor chooses to pursue repayment under Chapter 13, because the debtor has the right to convert to Chapter 7 at any time. It is not a windfall to the debtor to be able to retain a sum he never would have had to pay to creditors had he elected to file under Chapter 7 initially, without first trying to pay under Chapter 13.

The Fifth Circuit also expressed concern about allowing a debtor to use a well-timed conversion to deprive creditors of the depreciation value of the collateral property during the pendency of the Chapter 13 proceeding and then "snatch away" undistributed money intended for those creditors. Pet. App. 27a-28a. But that makes no sense. No one disputes that a debtor may permissibly convert immediately before his monthly deduction is

submitted to the trustee. That is a much more effective way to "snatch away" funds from creditors than converting between submission to the trustee and distribution by the trustee (over which the debtor has little control). And the result is the same from creditors' perspective.

Finally, it bears mentioning that every creditor in this case received all of the money it expected to receive, right up to the date of conversion. As in *Michael*, 699 F.3d at 307, the undistributed funds here were originally earmarked for a creditor that obtained relief by other means (namely, foreclosure). Because Harris continued to make his full plan payments, but neither the trustee nor any creditor sought to modify the plan to reallocate the freed-up funds to other creditors, see 11 U.S.C. § 1329(a)(1), the extra money accumulated in the trustee's hands. The rest of the money nevertheless continued to be paid out as provided by the plan until the time of conversion, which is all that other creditors could have expected when the plan was confirmed. Returning the undistributed funds to Harris—or other debtors in his position—thus will not unfairly shortchange any creditor.

CONCLUSION

The Fifth Circuit's judgment should be reversed.

Respectfully submitted.

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